

## LYNCHBURG CITY COUNCIL REPORT

Meeting Date: January 15, 2002 Council Report #: 14

Contact: Rachel Flynn – 847-1508 x 253 Report Writer: Bill McDonald 847-1508 x 257

Subject: Amendment to Section 35.1-43, I-3, of the Zoning Ordinance

Purpose of Action:

To amend the I-3, Heavy Industrial Districts, of the Zoning Ordinance to allow the repair/replacement of certain residential units.

Requested Action:

Adoption of proposed ordinance amendment

Prior Action:

December 12: Planning Commission recommended approval of the amendment  
December 12: Planning Division recommended approval of amendment

Attachments: Planning Commission report, Planning Commission minutes, proposed text

Resolution/Ordinance:

Attached

009L

Other Information: None

AN ORDINANCE TO AMEND AND REENACT SECTION 35.1-41 OF THE CODE OF THE CITY OF LYNCHBURG, 1981, THE AMENDED SECTION RELATING TO THE CITY'S HEAVY INDUSTRIAL DISTRICTS.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

1. That Section 35.1-41 of the Code of the City of Lynchburg, 1981, be and the same is hereby amended and reenacted as follows:

Sec. 35.1-41. Heavy industrial districts (I-3).

(a) Intent. These districts are intended to provide for industrial and other activities which produce the highest levels of nuisance permitted under federal and state air and water pollution regulations. Generally, the objective of this ordinance is to limit nuisances and any other objectionable characteristics to those which are not discernible beyond the boundary of the district. No use shall be allowed in this district unless listed or defined below as a use permitted by right, as a permitted accessory use or as a use permitted by conditional use permit, provided, however, that any such permitted use existing prior to December 13, 1988, may be enlarged or expanded, but not relocated, so long as it meets all other applicable requirements of this chapter. Any such use shall not be subject to any of the limitations or other regulations prescribed for non-conforming uses elsewhere provided in this chapter.

(b) Uses prohibited. The following uses are prohibited in heavy industrial districts:

- (1) Abattoir or slaughterhouse, except for poultry which is incidental to a commercial use permitted by this ordinance.
- (2) Acetylene gas manufacture on a commercial scale.
- (3) Acid manufacture, such as sulphurous, sulphuric, nitric, picric, hydrochloric or other corrosive or offensive acid manufacture, or their use or storage, except on a limited scale as accessory to a permitted industry.
- (4) Asphalt roofing, tar roofing or waterproofing manufacture.
- (5) Bleaching powder, ammonia or chlorine manufacture.
- (6) Celluloid or pyroxyline manufacture or processing; the manufacture of explosive or highly inflammable cellulose products.
- (7) Coal tar manufacture or tar distillation.
- (8) Creosote manufacture or creosote treatment.
- (9) Distillation of bones.
- (10) Fat rendering.
- (11) Fertilizer manufacture or the compounding of fertilizers on a commercial scale.
- (12) Fireworks or explosives manufacture, nitrating process, the loading of explosives or their storage in bulk.
- (13) Fish smoking or curing or processes involving recovery from fish or animal offal.
- (14) Gas manufacture, or gas storage in quantity exceeding five hundred thousand (500,000) cubic feet within one hundred (100) feet of any lot line; or in quantity exceeding two hundred (200) cubic feet if the pressure is greater than one hundred (100) pounds per square inch.
- (15) Glue or size manufacture.
- (16) Horn processing.
- (17) Lime, gypsum, plaster or plaster of paris manufacture.
- (18) Match manufacturing.
- (19) Office uses which are not directly related to an industry.
- (20) Petroleum manufacturing.
- (21) Potash manufacture.

- (22) Residential uses, including those of an institutional nature - institutional residential uses being those associated with churches or religious organizations, schools, hospitals, health or adult care facilities -, but (1) excluding residences of bona fide caretakers and their families, and (2) any residence constructed prior to and occupied as a residence since December 12, 1978. The limitations of Section 35.1-27, Nonconforming Uses, notwithstanding, such residences, in the event they are damaged or destroyed due to fire or other unforeseen circumstances (but not including neglect), may be rebuilt in their original location with substantially the same height and exterior dimensions, provided that they have frontage on an improved city street and that reconstruction is completed to the point that a new certificate of occupancy is issued within twenty-four (24) months from the date of damage or destruction.
- (23) Retail uses, unless specifically permitted under Section 35.1-41(c).
- (24) Sanitary or solid waste management facilities, private, except as otherwise permitted under Section 35.1-41(e).
- (25) Schools, hospitals, clinics and similar institutions.
- (26) Soda, soda ash, caustic soda manufacture.
- (27) Starch, glucose and dextrine manufacture.
- (28) Turpentine, varnish or shellac manufacture.
- (29) Any other use or purpose which will create conditions of smoke, fumes, noise, odors or dust detrimental to the health, safety and general welfare of the community.

(c) Uses permitted by right. The following uses shall be permitted by right in heavy industrial districts subject to the regulations of Section 35.1-14 of this ordinance:

- (1) Any manufacturing or industrial use which is not specifically prohibited by Section 35.1-41(b) above, provided, however, that any such prohibited use legally existing at the time of enactment of this chapter shall not be subject to any of the limitations or other regulations prescribed for non-conforming uses elsewhere provided in this ordinance.
- (2) Contractor and construction shops and yards.
- (3) Retail/wholesale display rooms for sales at industrial establishments of products manufactured on site and other products of the corporation provided the display area does not exceed fifteen (15) percent of the total floor area.
- (4) Truck painting and body repair shops.
- (5) Wholesale display rooms within industrial establishments as regulated by Section 35.1-40(b)(115).

(d) Permitted accessory uses. Uses not specifically prohibited by Subsection (b) above are permitted as accessory uses in heavy industrial districts.

(e) Uses permitted by conditional use permit. The following uses shall be permitted by conditional use permit under the regulations of Section 35.1-15 and Article X of this ordinance:

- (1) Automobile service stations.
- (2) Circus, carnival or other similar transient enterprise.
- (3) Food service facilities incident to one or a group of permitted uses.
- (4) Sanitary or solid waste management facility, private - establishment of a new facility.
- (5) Uses as determined appropriate by the city council.

(f) Standards. See Section 35.1-39.

(g) Signs. Signs, as regulated in I-1 industrial district shall be permitted as follows:

- (1) Signs as permitted in residential and limited business districts.

(2) Signs announcing the use of the lot and the business name of the business occupying the lot, subject to the following restrictions:

- a. No more than one (1) sign shall be permitted on frontage of each public road bordering the property.
- b. The total area of such signs shall not exceed one (1) square foot for each five (5) linear feet of such frontage but not to exceed one hundred (100) square feet in any case.
- c. The area of the advertising surface erected on any structure shall not be less than one hundred seventy-five (175) square feet nor more than six hundred seventy-five (675) square feet.
- d. All other billboards located in this district shall be located no less than five hundred (500) feet apart and shall be subject to the size requirements in paragraph c. above and the illumination requirements in Section 35.1-41, (g) (3), of this ordinance.
- e. The spacing provisions cited above shall not apply to billboards separated by buildings or other obstructions in such a manner that only one (1) sign located within the required spacing distance is visible from the road at any one time.

(3) Sign illumination. When any sign or billboard is lighted in this district, such lights shall be enclosed in the sign, shaded or indirect so that the source of illumination is not visible and in no way interferes with the vision of motorists or with neighboring residents. Only white illumination shall be used and no flashing (on-and-off) sign simulating movement shall be permitted. No fluorescent paint or other preparation can be used for high reflection.

(h) Parking requirements. Off-street parking and loading space shall be provided as required in Section 35.1-25; provided, however, the requirements of said section shall not apply in connection with buildings located in the first fire district as described in the city code.

2. That this ordinance shall become effective upon its adoption.

Adopted:

Certified:

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Clerk of Council

009L

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**To:** Planning Commission  
**From:** Planning Division  
**Date:** December 12, 2001  
**Re:** CONSIDERATION OF AMENDING SECTION 35.1-41, I-3, Heavy Industrial District

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**SYNOPSIS**

The City proposes to amend part of Section 35.1-41, I-3, Heavy Industrial Districts, to modify the regulations regarding the repair or rebuilding of residential structures in such districts.

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**SUMMARY**

Periodically, the City determines that some provisions of the Zoning Ordinance are unclear or may create unusual conditions that impose difficult restrictions on property owners. Some of the regulations of Section 35.1-41 of the Zoning Ordinance appear to fall within the latter category. Under "Uses Prohibited" of this section, the current provisions of item #22 prohibit residential uses in the I-3 District. The Zoning Ordinance previously allowed residential and commercial uses by right within industrial districts. Several years ago, at the request of the Director of Economic Development, the City Council amended the Zoning Ordinance to eliminate specified uses that "underutilized" industrial land. That amendment eliminated residential uses from the I-3 District.

There are a few areas in the City where some parcels in I-3 districts currently have residential structures that are still used as residences. However, because of the prohibition on residential uses, these residences in industrial districts have become nonconforming uses. As such, they are regulated by Section 35.1-27 (h) of the Zoning Ordinance. For a structure that is damaged more than 50% of the value of the structure, no repairs or reconstruction can be made unless the structure is made to conform to all regulations for the district in which it is located. When the destruction is less than 50%, the structure may be restored in substantially the same location if so permitted by the Planning Commission after public notice and hearing.

On occasion, this section has caused the owner of a structure or a potential purchaser difficulties. Apparently, some loaning institutions are reluctant to make a loan for the purchase of a property that cannot be readily repaired or rebuilt. The suggested amendment is being offered to address this matter in the Zoning Ordinance for residential structures in an I-3 district.

**Planning Division recommends approval of the proposed amendment.**

The entire text of the I-3 category is attached to this report as an appendix. The text of the proposed amendment to Section 35.1-41 (b)(22) is as follows:

- (22) Residential uses, including those of an institutional nature - institutional residential uses being those associated with churches or religious organizations, schools, hospitals, health or adult care facilities—, but excluding: 1) residences of bona fide caretakers and their families, and 2) any residence constructed prior to and occupied as a residence since December 12, 1978. Such residences, in the event they are damaged or destroyed due to fire or other unforeseen circumstance, not including neglect, may be rebuilt in their original location with substantially the same height and exterior dimensions, provided that they have frontage on an approved City street and that reconstruction is completed to the point that a new certificate of occupancy is issued within twenty-four (24) months from the date of destruction.

This matter is hereby offered for your consideration.

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William K. McDonald, AICP  
Acting City Planner

pc: Mr. L. Kimball Payne, III, City Manager  
Mr. Walter C. Erwin, City Attorney  
Ms. Rachel O. Flynn, Director of Community Planning & Development  
Mr. Bruce A. McNabb, Director of Public Works  
Mr. John W. Jennings, Fire Marshal  
Ms. Judith C. Wiegand, Strategic Planner  
Mr. J. Lee Newland, Director of Engineering  
Mr. Gerry L. Harter, Traffic Engineer  
Mr. Robert Drane, Acting Building Commissioner  
Mr. Arthur L. Tolley, Zoning Official  
Mr. Robert S. Fowler, Zoning Official

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(h) Parking requirements. Off-street parking and loading space shall be provided as required in Section 35.1-25; provided, however, the requirements of said section shall not apply in connection with buildings located in the first fire district as described in the city code. (Ord. No. O-80-338, § 1, 11-11-80; Ord. No. O-82-188, § 1, 9-14-82; Ord. No. O-88-323, § 1, 12-13-88; Ord. No. O-89-104, § 1, 5-9-89; Ord. No. O-92-142, 5-12-92; Ord. No. O-98-034, 3-10-98)

Consideration of an amendment to Section 35.1-41, I-3, Heavy Industrial Districts, of the Zoning Ordinance of the City Code of Lynchburg, to modify the regulations regarding the repair/rebuilding of residential structures in such districts.

Ms. Wiegand explained to the Commission that the City was looking at issues that arise when homes are located in industrially designated and zoned areas. Recently there have been cases where one person could not sell his home and another person's home burned and could not be rebuilt because the homes were in industrially zoned areas.

Ms. Wiegand said she has met with the Economic Development Office and the Industrial Development Authority Board to discuss changes in the Zoning Ordinance that would protect homeowners in I-3 zoned areas. She said the language included would permit a home to be rebuilt in the event of a disaster if:

- the home existed prior to December 1978, when the City's Zoning Ordinance was adopted,
- the home had been occupied as a home since before the adoption of the ordinance,
- the home had frontage on an approved City street, and
- the home was rebuilt with the same height and exterior dimensions.

Ms. Wiegand said these houses were scattered through different industrially zoned areas in the City, but were mostly concentrated on Chapel Lane and Carroll Avenue. She explained that when the entire Zoning Ordinance is rewritten following completion of the Comprehensive Plan, in the future, this section would be revisited; however, in the interim, the citizens who could be negatively affected by the current ordinance needed to be protected.

Commissioner Worthington asked if the staff and the City Attorney were satisfied with the proposed language of the amendment. He asked if a residence was owned by the same family for numerous years, but had not been occupied for a period of time, would a family member be allowed to then occupy the dwelling.

Ms. Wiegand said the City Attorney had approved the language. She explained that a nonconforming use would continue until such time that the facility, residence or business became vacant and remained vacant for at least two years, then the nonconforming use would no longer be valid.

Commissioner Wilkins asked if a homeowner could sell their house to another party who also wanted to use the house as their residence.

Commissioner Echols asked if the change in the Ordinance would allow a homeowner to sell his or her house to a person who wanted to use the residence for something other than a house.

Ms. Wiegand said a structure being used as a dwelling could be sold to someone to use as a dwelling or it could be used for a business that was classified as industrial, although the new owner could not make any exterior additions to the building for a nonconforming use. According to the proposed amendment, if a residence had been used within the last two-year period and was somehow destroyed, it could be rebuilt. However, if there had been a structure on the site which had not been used as a residence during the last two years, and was somehow destroyed, a structure could not be rebuilt because the home would have lost its status as a legal nonconforming use.

She said the only section of the Ordinance being changed is Uses prohibited...(22) (b) Residential uses. The section of the Zoning Ordinance dealing with nonconforming uses will not be changed.

Commissioner Moore asked if the current homeowner would be allowed to build an addition to their house.

Ms. Wiegand indicated that the homeowner would probably not be allowed to make additions to their house.

Mr. McDonald told the Commission that they might want to consider adding another clause to the Zoning Ordinance that would address potential conflict with the nonconforming use section of the Zoning Ordinance. He added that if the City Attorney approved the suggestion, then wording would be included in the Ordinance to avoid any conflicts.

Subsequent to the Planning Commission meeting the City Attorney confirmed that this clause should be added to the amendment. This clause has been added to the Zoning Ordinance text that is being submitted to City Council.

Commissioner Flint said he supported the request. He explained that if a house is forty percent destroyed, then it would be the Commission's decision to allow the home owner to rebuild or not, and how could the Commission deny a family the right to rebuild their house.

Ms. Wiegand suggested that, in the future, the City might consider establishing a fund to purchase property that was being used in a nonconforming way so that it could be used in a way that conformed to the zoning district.

After further discussion, Commissioner Worthington made the following motion, which was seconded by Commissioner Flint and passed by the following vote:

“That the Planning Division recommends to the City Council approval of an amendment to Item 22 of Section 35.1-51, I-3, Heavy Industrial Districts, of the Zoning Ordinance of the City Code of Lynchburg, to modify the regulations regarding the repair/rebuilding of residential structures in such districts as follows:

Residential uses, including those of an institutional nature - institutional residential uses being those associated with churches or religious organizations, schools, hospitals, health or adult care facilities -, but excluding: (1) residences of bona fide caretakers and their families, and (2) (the limitations of Section 35.1-27, Nonconforming Uses, notwithstanding) any residence constructed prior to and occupied as a residence since December 12, 1978. Such residences, in the event they are damaged or destroyed due to fire or other unforeseen circumstance (but not including neglect), may be rebuilt in their original location with substantially the same height and exterior dimensions, provided that they have frontage on an approved City street and that reconstruction is completed to the point that a new certificate of occupancy is issued within twenty-four (24) months from the date of destruction.”

AYES:	Dahlgren, Echols, Flint, Moore, Wilkins, Worthington	6
NOES:		0
ABSTENTIONS:		0